



No. 10219

**United States
Circuit Court of Appeals**

For the Ninth Circuit.

LEE ARENAS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

**Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the District Court of the United States For the
Southern District of California, Central Division.

No. 1321 O'C—Civil

LEE. ARENAS,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,
Defendant.

SECOND AMENDED COMPLAINT

The complainant, by permission of the Court, respectfully presents this, his Second Amended Complaint here, and complains and alleges, to wit:

I.

That he is and, at all times herein mentioned, was a citizen of the United States of America and of the State of California; a full blood American Indian of the Agua Caliente, or Palm Springs, Band of Mission Indians of California; of age, and a duly and regularly enrolled and recognized member of said Agua Caliente, or Palm Springs, Band of Mission Indians of California. That he was born upon the Palm Springs Indian Reservation, within the territorial limits of the United States and is now, and has, during and throughout his entire life, been a resident of and lived upon the said Palm Springs Indian Reservation in the County of Riverside, State of California; that he has now and during

and throughout his entire life has adopted the habits, ways and methods of living of the civilized life; that he has voluntarily taken up, and from the date of his birth, within said limits of said Palm Springs Indian Reservation, has kept and maintained his home and residence separate and apart from any tribe of Indians therein, although he has at all times kept and maintained his tribal relationship, membership and enrollment in said Agua Caliente, or Palm Springs, Band of Mission Indians; that he is able to read and write the English language; that he is possessed of a degree of education and intelligence above the average of any race; and is and, at all times since February 8, 1887, has been entitled to all of the rights, privileges and immunities of a citizen of the United States of America, and of the heritage of his Indian ancestry.

II.

That the Secretary of the Department of the Interior of the United States of America, acting under and by virtue of the authority of the Act of Congress of January 12, 1891 (26 Stat. L. 712-14) as amended June 25, 1910 (36 Stat. L. 855-65) and March 2, 1917 (39 Stat. L. 976) did, on or about, to wit, the 7th day of June, 1921, determine that, in his opinion, the aforesaid Band of Mission Indians, including complainant, were so far advanced in civilization and had so far adopted the life, habits and ways of civilized life as to be capable of owning and managing land in severalty, and did there-

after cause on H. E. Wadsworth to be appointed a Special Allotting Agent at Large of the United States of America to make, and cause to be made, allotments of land on the Agua Caliente, or Palm Springs, Indian Reservation, to such duly and regularly enrolled Indians of said Band of Mission Indians, and among them your complainant, as made, or might make, selection of the hereinafter described lands, for allotment in severalty to the said respective duly and regularly enrolled members of said Band, and among them your complainant, and to allot, or cause to be allotted, to them, including your Complainant, the respective lands so selected by them, respectively, in severalty.

III.

That on or about June 23, 1923, complainant did make his selection of said lands, and did choose certain parcels of land, including the homesite which then and long prior thereto [3] this complainant had occupied and partially improved as his homesite. That thereupon complainant notified the said H. E. Wadsworth, acting pursuant to his powers and duties as Special Allotting Agent at Large to the California Mission Indians, including said Band of Mission Indians, and thereupon the said H. E. Wadsworth as such Special Allotting Agent at Large, did allot, or cause to be allotted to each of certain duly and regularly enrolled members of the said Agua Caliente, or Palm Springs, Band of Mission Indians, including complainant, the lands so selected by each of them for allotment as aforesaid, and did as evidence thereof prepare

certain Official Allotment Schedules and caused the selections for allotment, aforesaid, to be inscribed on said Special Allotment Schedules in the respective names of the respective members of the said Agua Caliente, or Palm Springs, Band of Mission Indians, making, or who had made, their selection of said Palm Springs Indian Reservation lands for allotment in severalty.

That thereafter the said H. E. Wadsworth, as such Special Alloting Agent at Large, did, as evidence of said respective selections of lands for allotment in severalty by said respective members of said Band of Mission Indians, execute, issue and cause to be executed, issued and delivered to the aforesaid members of said Band of Mission Indians, who had made their selections of lands of said Palm Springs Indian Reservation for special allotment to said respective selectees in severalty, Certificates of Selection as evidence of their respective vested equitable right, title and interest in and to the specific parcels of land so selected by them, and each of them.

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IV.

That the said H. E. Wadsworth, as such Special Alloting Agent, did, on the 21st day of June, 1923, issue to this complainant, a Certificate of Selection covering the selection of the particular parcels of said land selected by complainant for allot- [4] ment in severalty to complainant, as aforesaid, and said Certificate did confirm an already and pre-existing equitable right of preemption for entry of said lands and that portion of said specific par-

ceels of land theretofore occupied and previously partially improved by this complainant as his homesite, separate and apart of all other members of said Agua Caliente, or Palm Springs, Band of Mission Indians, and did create, recognize and confirm an equitable title vested in this complainant in and to said particular parcels of land, described in said certificate of selection, aforesaid; that said Certificate of Selection for allotment in severalty to this complainant of the aforesaid and hereinafter described specific parcels of land, did authorize and empower complainant to enter upon and take exclusive possession of said specific parcels of land as more fully hereinafter set out and described, and that this complainant did enter upon and take sole and exclusive possession of the lands selected for allotment in severalty by complainant, as aforesaid, together with the buildings and improvements thereon previously erected by this complainant. That said H. E. Wadsworth, as such Special Allotting Agent at Large of the Department of the Interior surveyed and classified, or caused to be surveyed and classified, the lands of said Band of Mission Indians, contained within the limits and boundaries of said Indian Reservation, and did allot to your complainant in severalty pursuant to the terms and provisions of the Acts of Congress, the following lands, to wit:

Parcel (a) Homesite:

Lot 46, Section 14, Township 4 South, Range 4 East, S.B.M., comprising two (2) acres;

Parcel (b) Irrigated:

Tract No. 39, Section 26, Tract No. 39, Sec-

tion 26, Township 4 South, Range 4 East, S.B.M., comprising five (5) acres; and [5] Parcel (c) Desert:

E $\frac{1}{2}$ SW $\frac{1}{4}$ N.W. $\frac{1}{4}$ & SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ & SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, Township 4 South, Range 4 East, S. B. M., comprising forty (40) acres;

that said lands aggregated forty-seven (47) acres, and all of said parcels of land were then a part of the Agua Caliente, or Palm Springs, Band of Mission Indian Reservation in Riverside County, State of California, and composed and comprised lands which from time immemorial had been occupied, used and controlled by the Agua Caliente, or Palm Springs, Band of Mission Indians and their tribal ancestors and predecessors, under an original title antedating the acquisition of California by the United States of America and under the terms and provisions of the Treaty of Guadeloupe Hidalgo. That said original title existed long prior to the admission of the State of California as a State into the United States of America, and by Executive Orders of the President of the United States of America, dated the 15th day of May, 1876, and the 9th day of September, 1877, was recognized and confirmed by the United States of America. That Patents in Trust issued therefor to the said Agua Caliente, or Palm Springs, Band of Mission Indians, including complainant as an enrolled and recognized member thereof, on the 14th day of May, 1896; the 29th day of October, 1906, the 29th day of March, 1923; and the 5th day of January, 1911.

under and pursuant to said executive orders as aforesaid.

VI.

That the said Patents in Trust created a vested interest in said lands in said Band and every member thereof including complainant, and that thereafter to and until the present date the legal title to the whole of the said segregated lands of the said Agua Caliente, or Palm Springs, Band of Mission Indians, has been and now is vested in the United States of America for the [6] sole and exclusive use and benefit of the said Agua Caliente, or Palm Springs, Band of Mission Indians of California in trust pursuant to and in conformity with the terms and provisions of the said Executive orders of the President of the United States of America, aforesaid, and of the Acts of Congress. That the said Band of Mission Indians and this complainant, as a duly enrolled and recognized member thereof, have at all times and do now maintain their tribal relationship, despite their having adopted the habits and ways of civilized life.

VII.

That as evidence of said selection of and allotment to this complainant of the aforesaid described lands, the Department of the Interior of the United States Bureau of Indian Affairs did issue, execute and deliver to your complainant a Certificate substantially in the following words and figures, to wit:

"5-201

"SELECTION FOR ALLOTMENT

"On Agua Caliente Indian Reservation, 1923.

"This is to Certify That Lee Arenas has selected the Lot No. 46, Sec. 14, Tract No. 39, Sec. 26, and E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ & SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ & SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 26, all in Township 4 South, Range No. 4 East of the San Ber. M., containing 47 acres, more or less, according to Government Survey. Stake No. ———

"Not valid unless approved by the Secretary of the Interior." [7]

(signed) H. E. WADSWORTH

U. S. Special Allotting Agent."

"6-1060"

VIII.

That long prior to the issuance and delivery of said Certificate of Selection for Allotment, this complainant had been in actual physical possession of a portion of the said lands so selected by him for allotment in severalty as aforesaid, had actually resided thereon, and had erected valuable buildings and improvements thereon, and that from and since the selection of said parcels of land aforesaid by this complainant for allotment in severalty to this complainant and from and since the notification thereof given by complainant, as aforesaid, to said H. E. Wadsworth, as said Special Allotting Agent at Large, and the issuance and deliv-

ery of the aforesaid Certificate of Selection for Allotment in Severalty, as aforesaid, complainant has at all times had and possessed the exclusive and preemptive right to the exclusive use and benefit of the said lands so selected by this complainant for allotment in severalty, and had a vested interest therein.

IX.

That on or about the 26th day of October, 1923, said H. E. Wadsworth as such Special Allotting Agent at Large, inquired of the Indian Office at Washington, D. C., whether or not the Mission Indians of the State of California, who had made their selection of lands for allotment were to be permitted to take immediate possession of the lands so selected by them and have the individual and exclusive use thereof for agricultural purposes.

X.

That thereafter, on October 26, 1923, the Indian authorities at Washington, D. C., advised said H. E. Wadsworth, as such agent, that the Mission Indians who had made selection of Reserva- [8] tion lands as aforesaid, might enter upon and take actual, physical possession of their respective selections of lands for allotment in severalty, and might, without objection of the said Bureau of Indian Affairs of said Department of the Interior, enter upon and enjoy actual, physical possession in severalty of the lands so selected by them for the purpose of the cultivation and planting of early crops.

XI.

That thereafter said H. E. Wadsworth, as such Special Alloting Commissioner at Large, and in accordance with the custom and usual conduct of said Bureau of Indian Affairs, encouraged and permitted said allottees, including complainant, to enter upon and take sole and exclusive physical possession of, and to improve, the lands so selected by them, as aforesaid.

XII.

That by reason thereof, this complainant and others of said selectees, did enter upon, cultivate and substantially improve said lands. That by reason thereof, complainant did expend, work, labor and materials and incurred personal liability thereby in the improvement of his parcels of land.

XIII.

That thereafter said H. E. Wadsworth, as such Special Alloting Agent, issued and delivered to your complainant the Certificate of Selection of said lands as aforesaid. That said lands are the same lands your complainant had previously selected to take as an allottee in severalty under and pursuant to the Acts of Congress aforesaid; that at the time of the issuance of the said Certificate of Selection aforesaid and subsequent thereto, the said H. E. Wadsworth, Special Alloting Agent at Large, as aforesaid, did state and represent to your complainant that the said Certificate of Selection, aforesaid, was and would be evidence of complain-

ant's vested right and authority to possess, hold and improve the said [9] lands hereinabove described, in severalty, until patents in trust for said particular lands were issued to and received by complainant from the defendant.

XIV.

That subsequent to the selection of the lands aforesaid by this complainant, as aforesaid, and subsequent to the scheduling and certification of said vested rights in and to said lands in this complainant, as aforesaid, the defendant, acting by and through its Commissioner of Indian Affairs of the Bureau of Indian Affairs, of the Department of the Interior, and the Secretary of the Interior, represented and stated to complainant that a patent in trust would issue to this complainant covering said particular parcels of land, aforesaid, by reason of said selection, scheduling and certification for allotment, as aforesaid. That this complainant relied thereon and believed said statements and in such belief and reliance complainant made substantial expenditures of work, labor and materials upon said lands, and in the permanent improvement thereof.

XV.

That by reason of the matters herein alleged, this complainant did improve said lands by erecting thereon buildings and other permanent structures and improvements, assigned for and suitable for use for residential, commercial and business pur-

poses, productive of income and revenue, and equipped with conveniences for the use, maintenance and operation thereof and the continuous permanent improvement of said lands. That by reason thereof, said respective parcels of land have become productive and now yield to this complainant an annual net income and revenue in excess of \$1,000.00 per year, all of which said net income and revenue is attributable to the substantial and permanent improvement of said respective parcels of land by the industry, outlay and effort of your complainant, as aforesaid, and said income is a material and [10] substantial portion of the annual income of your complainant.

XVI.

That substantially fifty per cent. (50%) of the moneys so used and consumed by complainant in the permanent improvement of said parcels of land aforesaid, were obtained by his complainant from sources entirely independent of said lands, and were the moneys of this complainant derived by this complainant from his own business, foresight, efforts, and economic acumen, ability and foresight, and the remainder of said moneys so expended in said improvement of said parcels of land, were obtained and procured by this complainant as revenue from said parcels of land, and from the permanent improvements made thereon by your complainant. That said improvements upon said lands were and are of a substantial and permanent nature and

that complainant did expend in the making of said substantial and permanent improvements upon said lands an aggregate sum in excess of Fifteen Thousand Dollars (\$15,000.00), lawful money of the United States of America, and a great deal of the personal time and labor of this complainant.

XVII.

That this complainant would not have made said permanent improvements and would not have expended said work and labor, or said materials and money in the erection of said improvements upon said respective parcels of land, excepting for said conduct and representation of the said defendant, its agents, servants and employees.

XVIII.

That by reason of said expenditures in the improvement of said lands, and said conduct of the defendant, its official representatives, agents, servants and employees, as aforesaid, the said lands were and have become greatly enhanced in value.

That by reason of the acts and conduct of the defendant, its agents, representatives, agencies, servants and employees, [11] as aforesaid, the defendant is estopped to deny the validity of complainant's right, title and interest in and to said lands, and is further estopped as aforesaid, from denying, questioning or attacking complainant's right, title and interest therein.

XIX.

That the present reasonable market value of the

said lands so selected by this complainant for allotment in severalty to this complainant from the lands of said Band of Mission Indians and the improvement thereof as aforesaid, is in excess of \$15,000.00.

XX.

That from and after the selection of said lands by complainant as aforesaid, and from and after the placing of the descriptions of the said lands upon the Special Allotment Schedules of the said H. E. Wadsworth, Special Allotment Agent of the United States of America for the Mission Indian Reservations of California, as aforesaid, and subsequent to the issuance and delivery of the aforesaid Certificate of Selection therefor, and subsequent to the actual entry upon and taking of actual, physical possession of the said lands by this defendant, separate and apart from all other lands of said Agua Caliente, or Palm Springs, Mission Band of Indians and during and through the creation, construction and making of the permanent improvements upon said selected lands as aforesaid by this complainant, the defendant, its Secretary of the Interior and its Commissioner of Indian Affairs of the Bureau of Indian Affairs of the Department of the Interior of the United States of America, did withhold action approving the said Certificate of Selection for the Allotment of said lands for a long, unreasonable and unwarranted period of time, from and after, to wit, the 21st day of June, 1923, to and until a date long subsequent thereto, and the

exact day and date of which is unknown to complainant, has not been disclosed [12] by defendant, and of which day and date complainant has to this time not been informed, and by its Secretary of the Interior did then and there, and very recently, without notice to complainant, and in violation of the vested rights, title and interests of this complainant, disapprove the said Special Schedules of Allotments of Lands in the Agua Caliente, or Palm Springs, Mission Indian Reservation, and did disapprove the Certificate of Selection for Allotment, aforesaid.

XXI.

That the Secretary of the Interior, after having once determined that in his opinion the members of said Band of Mission Indians, and the members thereof, including your complainant, had adopted the habits of civilization and were so far advanced in civilization as to be capable of owning and managing land in severalty, and, after having, caused selection of the lands to be allotted in severalty to be made by such Indians, including your complainant, and the Schedules of Allotment to be made in accord with such selections made by said Indians, including your complainant, and having partially executed the allotments aforesaid, including that to your complainant, and having permitted and encouraged said Indian allottees to enter upon said selected lands and to improve the same as aforesaid, the Secretary of the Interior was and is wholly without discretionary power to change, modify or

alter his decision theretofore made, or to vacate, avoid or set aside the selections for allotments theretofore made by such Indians including your complainant, and that said action of disapproval of said selections for allotment, said schedules of allotment and said certificates of selection for allotment, including those of your complainant, by said Secretary of the Interior were and are void and of no effect whatsoever.

XXII.

That such disapproval by the Secretary of the Interior of [13] such selections, schedules and Certificates of Allotment, and more especially that of complainant, is arbitrary, biased, prejudiced and wholly without authorization or justification under the terms and provisions of the Acts of Congress, aforesaid, and is and does amount to the perpetration of a fraud by the Secretary of the Interior upon such Indian selectees for allotment of lands in severalty of said Indian Reservation, and more especially upon complainant.

XXIII.

That this complainant is suffering and will continue to suffer, great and irreparable injury and damage by said action of the Secretary of the Department of the Interior of the United States.

XXIV.

That Francisco Arenas, the complainant's father, was a full blood Indian of the Agua Caliente or

Palm Springs Band of Mission Indians of California; that at all times herein mentioned said Francisco Arenas was of age and a duly enrolled and recognized member of said Band; and that said Francisco Arenas was at the date of his death which occurred on the 4th day of October, 1924, and had been during all of his life, a resident upon the Reservation of said Band of Indians; that throughout his entire life Francisco Arenas had voluntarily adopted the habits and ways of civilization, lived separate and apart from all other members of said Band, although at all times remaining an enrolled member of said Band and maintaining his tribal relationships therewith, without in any manner abandoning or waiving his vested rights, titles and interests in tribal funds, lands, property or revenues or any rights, privileges or immunities, vested in him as a member of said Agua Caliente, or Palm Springs, Band of Mission Indians of California.

[14]

XXV.

That said H. E. Wadsworth as such Special United States Alloting Agent at Large for the Mission Indian Reservations of California, and acting in accordance with and pursuant to the authority in him as aforesaid, and acting under the authority and direction of the Secretary of the Interior of the United States and the Statutes of the United States of America therefor provided, did allot to said Francisco Arenas, on the 21st day of

June, 1923, the following described lands, to wit:

Parcel (a) Homesite:

Lot No. 28, Section 14, Twp. 4 South, Range 4 East, S.B.B. & M., comprising two (2) acres;

Parcel (b) Irrigated:

Tract No. 42, Sec. 26, Twp. 4 S., Range 4 East, S.B.B. & M., comprising five (5) acres;

Parcel (c) Desert:

SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 26, Twp. 4 S., Range 4 East, S.B.B. & M., comprising forty (40) acres;

totaling forty-seven (47) acres, and contained in the said Allotting Agent's schedule of June 21, 1923, said land being a part of the Agua Caliente, Palm Springs, Mission Indian Reservation, in Riverside County, California; that under and by virtue of the said allotment the said Special Allotting Agent issued a Certificate to said Francisco Arenas under which he, the said Francisco Arenas, became entitled to the sole use and benefit of said allotment, and the lands described thereunder, which are the same lands said Francisco Arenas had previously selected to take.

XXVI.

That subsequent to the making of said allotment to said Francisco Arenas as aforesaid, said defendant represented to said Francisco Arenas that from and after the making of said allotments as aforesaid, said Francisco Arenas was entitled to enter upon and [15] take possession of the lands covered by said allotment, and to improve the same.

and that said Certificate of Allotment would be evidence of said Francisco Arenas' authority to so possess, use and improve said lands until Trust Patents upon said lands should be issued to said Francisco Arenas by said Secretary of the Interior.

XXVII.

That subsequent to the making of said Allotment as aforesaid, said defendant represented to said Francisco Arenas that a Trust Patent would issue to said Francisco Arenas upon said lands by reason of said allotment, and that said Francisco Arenas was fully justified in making substantial expenditures of time, money and property upon the lands covered by said allotment, and encouraged said Francisco Arenas to enter upon and improve said lands.

XXVIII.

That said Francisco Arenas believed said representations, and each of them, and relied thereupon, and by reason thereof and not otherwise, and subsequent to the making of said representations, as aforesaid; said Francisco Arenas improved said lands described in said allotment by erecting thereon buildings and other structures designed for use and suitable for use for residential and business purposes and conveniences, and expended in the making of said improvements a sum in excess of \$750.00, lawful money of the United States of America, and a very great deal of the personal time of said Francisco Arenas. That said Francisco

Arenas would not have made said improvements and would not have expended said time or said money excepting for said conduct and representations of said defendant and its agents and representatives.

XXIX.

That by reason of the expenditure of money and time by said Francisco Arenas in the improvement of said lands covered by said allotment, as aforesaid, the value of said land has been [16] greatly increased, and the said property has been made productive, and yields an annual net income in excess of \$150.00 per year, all of which said income is attributable to the improvement of said property as aforesaid.

XXX.

That substantially fifty per cent (50%) of the moneys so used by said Francisco Arenas in the improvement of said lands as aforesaid were obtained by said Francisco Arenas from sources entirely independent of said lands, and were the moneys of said Francisco Arenas, and that the remainder of the moneys expended in the improvement of said lands, as aforesaid, were obtained as revenue from improvements made by said Francisco Arenas upon said lands, in reliance upon the conduct and statement of said defendant and its agents and representatives as herein alleged.

XXXI.

That at all times herein mentioned, while said

improvements were being made by said Francisco Arenas, as aforesaid, said defendant and its Secretary of the Interior, and its Commissioner of Indian Affairs at Washington, knew of the representations so made to said Francisco Arenas by said defendant, and on its behalf as aforesaid, and knew of the improvement of said lands by said Francisco Arenas, as aforesaid, and fully acquiesced therein and encouraged the same.

XXXII.

That the reasonable market value of the said lands under said allotment as improved as aforesaid is about \$50,000.00, and said lands yield an annual net income of about \$150.00.

XXXIII.

That upon the death of said Francisco Arenas, which occurred on the 4th day of October, 1924, at and upon said Reservation, in the State of California, this complainant succeeded by inheritance to all of the right, title, interest, equity and [17] estate of the said Francisco Arenas, his father, in, to and under said selections for allotment and said allotments, and in, to and under the lands covered thereby, and at all times since this complainant has been and now is the owner and in possession thereof, under an equitable title capable and susceptible of maturing into and becoming a complete legal title in fee simple, and entitled to receive all of the benefits accruing or to accrue therefrom; that ever since the death of said Fran-

cisco Arenas your complainant has been and now is in possession and control of said lands.

XXXIV.

That Guadeloupe Arenas, the complainant's wife, was a full blood Indian of the Agua Caliente, or Palm Springs, Band of Mission Indians of California; that at all times herein mentioned said Guadeloupe Arenas was of age and a duly enrolled and recognized member of said Band; and that said Guadeloupe Arenas was at the date of her death, which occurred on the 26th day of March, 1937, and had been during all of her life, a resident upon the reservation of said Band of Indians, and had voluntarily adopted the ways and habits of civilized life, and lived separate and apart from other members of said Band, although at all times retaining and maintaining her tribal relation therewith and in no wise abandoning or waiving her right to share in *tribal* property or any rights, privileges or immunities as a member of said band, and was at all times capable of owning, holding and managing land in severalty.

XXXV.

That said H. E. Wadsworth, as such Special United States Allotting Agent, did allot to said Guadeloupe Arenas, on the 25th day of June, 1923, the following described lands, to wit: —

Parcel (a) Homestead:

Lot 47, Sec. 14, Twp. 4 South, Range 4 East,

S.B.B. & M., comprising two (2) acres; [18]
Parcel (b) Irrigated:

Tract No. 40, Sec. 26, Twp. 4 South, Range 4
East, S.B.B. & M., comprising five (5) acres;

Parcel (c) Desert:

SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26, Twp. 4 S., Range 4 East,
S.B.B. & M., comprising forty (40) acres;
totaling forty-seven (47) acres in the County of
Riverside, State of California, and contained in the
said Allotting Agent's Schedule of June 25, 1923,
said land being a part of said Mission Indian Res-
ervation in Riverside County, California; and that
under and by virtue of the said allotment the said
Special Allotting Agent issued a Certificate of Se-
lection for Allotment to said Guadalupe Arenas
under which she, the said Guadalupe Arenas, be-
come entitled to the sole use and benefit of said
lands covered by said Certificate of Selection for
allotment, and the lands described thereunder, which
are the same lands the said Guadalupe Arenas had
previously selected to take.

XXXVI.

That said Guadalupe Arenas at all of the times
herein mentioned was, prior to her death as afore-
said, an actual resident upon the said Tract No. 40
hereinabove described and allotted to said Guada-
loupe Arenas, and had voluntarily adopted the
habits and ways of civilized life, and lived sepa-
rate and apart from all other members of said
Band, although maintaining her tribal relations
with said Band, and in no wise ceasing to be an
enrolled member thereof.

XXXVII.

That subsequent to the making of said allotment to said Guadalupe Arenas, as aforesaid, said defendant represented to said Guadalupe Arenas that from and after the making of said allotment as aforesaid said Guadalupe Arenas was entitled to enter upon and take possession of the lands covered by said allotment, and to [19] improve the same, and that said Certificate of Allotment would be evidence of said Guadalupe Arenas' authority to so possess, use and improve said lands until trust patents upon said lands should be issued to said Guadalupe Arena by said Secretary of the Interior.

XXXVIII.

That subsequent to the making of said Allotment as aforesaid, said defendant represented to said Guadalupe Arenas that a Trust Patent would issue to said Guadalupe Arenas upon said lands by reason of said allotment, and that said Guadalupe Arenas was fully justified in making and encouraged her to make, substantial expenditures of time, money and property upon the lands, covered by said allotment.:

XXXIX.

That said Guadalupe Arenas believed said representations, and each of them, and relied thereupon, and by reason thereof and not otherwise, and subsequent to the making of said representations, as aforesaid, said Guadalupe Arenas substantially improved said lands described in said allot-

ment by erecting thereon building and other structures designed for use and suitable for use for residential and business purposes and conveniences, and expended in the making of said improvements a sum in excess of \$12,500.00, lawful moneys of the United States of America, and a very great deal of the personal time of said Guadalupe Arenas; that said Guadalupe Arenas would not have made said improvements, and would not have expended said time or said money excepting for said conduct and representations of said defendant.

XL.

That by reason of the expenditure of money and time by said Guadalupe Arenas in the improvement of said lands covered by said allotment, as aforesaid, the value of said land has been greatly increased and the said property has been made productive [20] and yields an annual net income in excess of \$2,500.00, all of which said income is attributable to the improvements of said property as aforesaid.

XLI.

That substantially fifty per cent (50%) of the moneys so used by said Guadalupe Arenas in the improvements of said lands as aforesaid were obtained by said Guadalupe Arenas from sources entirely independent of said lands, and were the moneys of said Guadalupe Arenas, and that the remainder of the moneys expended in the improvement of said lands, as aforesaid, was obtained as

revenue from improvements made by said Guadalupe Arenas upon said lands, in reliance upon the conduct and statement of said defendant and its agents and representatives as herein alleged.

XLII.

That at all times herein mentioned, while said improvements were being made by said Guadalupe Arenas, as aforesaid, said defendant knew of the making of said representations, and knew of the improvement of said lands by said Guadalupe Arenas, as aforesaid, and fully acquiesced therein and encouraged the same.

XLIII.

That the reasonable market value of the said lands under said allotment as improved as aforesaid is about \$75,000.00, and said lands yield an annual net income of about \$2,500.00.

XLIV.

That upon the death of said Guadalupe Arenas, which occurred on the 26th day of March, 1937, at and upon said Reservation, in the State of California, this complainant, husband of the said Guadalupe Arenas, succeeded by inheritance to all of the right, title, interest, equity and estate of the said Guadalupe Arenas, in, to and under said selection for allotments and said allotments, and in, to the lands covered thereby, and at all times since this complainant has been and now is the owner and in possession thereof, [21] and entitled to re-

ceive all of the benefits accruing or to accrue therefrom; that ever since the death of said Guadalupe Arenas your complainant has been and now is in possession and control of said lands.

XLV.

That Simon Arenas, the complainant's brother, was a full blood Indian of the Agua Caliente, or Palm Springs, Band of Mission Indians of California; that at all times herein mentioned said Simon Arenas was of age and a duly enrolled and recognized member of said Band; and that said Simon Arenas was at the date of his death, which occurred on the 18th day of February, 1925, and had been during all of his life, a resident upon the Reservation of said Band of Indians; that said Simon Arenas had voluntarily adopted the habits and ways of civilization, lived separate and apart from all other members of said Band, had always maintained his tribal relations with said Band and never waived or abandoned any of his right to share in the property and income thereof, or any rights, privileges, or immunities as a member of said Band.

XLVI.

That Simon Arenas notified said H. E. Wadsworth, as such Special United States Allotting Agent, of his selections of lands of said Reservation for allotment, and said Agent did thereupon allot to said Simon Arenas, on the 21st day of June, 1923, the following described lands, to wit: Parcel (a) Homestead:

Lot No. 43, Sec. 14, Twp. 4 South, Range 4 East, S.B.B. & M., comprising two (2) acres;

Parcel (b) Irrigated:

Tract No. 37, Sec. 2, Twp. 5 South, Range 4 East, S. B. B. & M., comprising five (5) acres;

Parcel (c) Desert:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 26, Twp. 4 South, Range 4 East, S.B.B. & M., [22] comprising forty (40) acres;

totaling forty-seven (47) acres, and contained in the said Alloting Agent's Schedule of June 21st, 1923, said land being a part of the Agua Caliente or Palm Springs Mission Indian Reservation in Riverside County, California. That by virtue of the said allotment, said Special Alloting Agent issued a Certificate of Selection for Allotment to said Simon Arenas as to said lands.

XLVII.

That subsequent to the making of said allotment to said Simon Arenas, said defendant represented to said Simon Arenas that from and after the making of said selection for allotment in severalty and said allotment as aforesaid, said Simon Arenas was entitled to enter upon and take exclusive possession of the lands covered by said allotment, and to improve the same, and that said Certificate of Allotment would be evidence of said Simon Arenas' authority to so possess, use and improve said lands until Trust Patents upon said lands should be is-

sued to said Simon Arenas by said Secretary of the Interior.

XLVIII.

That subsequent to the making of said selection for allotment by said Simon Arenas and that subsequent to the making of said allotment to said Simon Arenas thereof, as aforesaid, said defendant represented to said Simon Arenas that a Trust Patent would issue to said Simon Arenas upon said lands by reason of said allotment, and that said Simon Arenas was fully justified in making substantial expenditures of time, money and property upon the lands covered by said allotment.

XLIX.

That said Simon Arenas believed said representations, and each of them, and relied thereupon, and by reason thereof and not otherwise, and subsequent to the making of said representations as aforesaid, said Simon Arenas improved said lands described in said allotment by erecting thereon buildings and other structures [23] designed for use and suitable for use for residential and business purposes and conveniences, and expended in the making of said improvements a sum in excess of \$500.00, lawful money of the United States of America, and a very great deal of the personal time of said Simon Arenas; that said Simon Arenas would not have made said improvements and would not have expended said time or said money excepting for the said conduct and representations of said defendant.

L.

That by reason of the expenditure of money and time by said Simon Arenas in the improvement of said lands covered by said allotment, as aforesaid, the value of said land has been greatly increased, and has become very valuable by reason of its close proximity to Palm Springs, a Municipal Corporation of great wealth.

LI.

That substantially fifty per cent (50%) of the moneys so used by said Simon Arenas in the improvement of said lands as aforesaid were obtained by said Simon Arenas from sources entirely independent of said lands, and were the moneys of said Simon Arenas, and the remainder of the moneys expended in the improvement of said lands, as aforesaid, were obtained as revenue from improvements made by said Simon Arenas upon said lands, in reliance upon the conduct and statement of said defendant and its agents and representatives as herein alleged.

LII.

That at all times herein mentioned, while said improvements were being made by said Simon Arenas, as aforesaid, said defendant knew of the representations so made to said Simon Arenas, and knew of the improvement of said lands by said Simon Arenas, as aforesaid, and fully acquiesced therein and encouraged the same.

LIII.

That the reasonable market value of the said lands under [24] said allotment as improved as aforesaid is about \$50,000.00.

LIV.

That upon the death of said Simon Arenas, brother of complainant, which occurred on the 18th day of February, 1925, at and upon said Reservation, in the State of California, this complainant succeeded by inheritance to all of the right, title, interest, equity, and estate of the said Simon Arenas in, to and under said allotments, and in, to and under the lands covered thereby, and at all times since this complainant has been and now is the owner and in possession thereof, and entitled to receive all of the benefits accruing or to accrue therefrom; that ever since the death of said Simon Arenas your complainant has been and now is in possession and control of said lands.

LV.

That by reason of the matters herein set forth, said defendant is estopped to withhold from this complainant a Trust Patent to be issued by said Secretary of the Interior to this complainant, upon the lands covered by said allotment, and is estopped to deny the right of this complainant to a Trust Patent upon said lands pursuant to and under said allotment.

LVI.

That the authority for bringing this suit and nam-

ing the United States of America as a party defendant rests under the Acts of Congress of August 15, 1894 (28 Stat. L. 305) and as amended by Act of February 6, 1901 (31 Stat. L. 760).

LVII.

That your complainant has many times made requests upon the proper agents of the United States to secure unto him an allotment Trust Patent for the lands herein described, and which have been allotted to him as herein alleged, and to which he has succeeded by inheritance as aforesaid, but that said Allotment Trust Patents have not, up to this date, been issued to him by the United States [25] of America, and said defendant refuses to issue the same.

LVIII.

That for a long period of time, to wit, from June 21, 1923, to and until the present time of the filing of this Second Amended Bill of Complaint, the Bureau of Indian Affairs of the Department of the Interior of the United States of America, by and through its officers, agents, and servants, and the Commissioner of Indian Affairs of the Bureau of Indian Affairs of the Department of the Interior, and the Secretary of the Interior of the United States under color of their respective official positions, have, pursuant to a prearranged and preconcerted plan and course of action, as your complainant is informed and believes, and therefore alleges, have committed, and are committing, arbitrary, il-

legal and detrimental acts conflicting with, and in violation of, provisions of the Acts of Congress aforesaid, thereby discriminating against the individual members of the aforesaid Agua Caliente, or Palm Springs, Band of Mission Indians, and tending to set at naught the provisions of the Acts of Congress then and there in full force and effect, and discriminating against this complainant, in connection with the matters herein alleged, and do seek to deprive said respective Indians, including complainant, of the right to acquire legal title to said property in severalty, and do seek to retard their economic and social development, and deprive them of their lands of said reservation and respective allotments of land in severalty, and do seek to procure their removal therefrom, including complainant, and to cause the same, and to procure the leasing for development for recreational and resort purposes of lands, within the territorial limits and boundaries of the aforesaid Agua Caliente, or Palm Springs, Mission Indian Reservation, including the aforesaid allotments of complainant, and did and so wrongfully withhold, pursuant to said plan and purpose to despoil said Indians, the issuance of patents in trust to said Reservation Indians, including complainant, for the lands selected for allotment and actually possessed and occupied in severalty by the said members of said band of Mission Indians aforesaid, and to seek to divest and deprive the said Indian selectees and allottees of their said property rights, and do connive and col-

lude with private interests and persons, firms and corporations of great wealth and political power to illegally and unlawfully prevent and retard the economic and social development of the individual members of the said Agua Caliente, or Palm Springs, Band of Mission Indians, who had selected specific parcels of land for allotment, in severalty, in conformity with the then existing allotment laws of the United States, and the then existing Acts of Congress, aforesaid, and to deprive them of their interests therein, without any compensation therefor.

LIX.

That complainant has been especially aggrieved and damaged and defrauded by the conduct of said Bureau of Indian Affairs, its officers, agents, servants and employees, and the said Commissioner of Indian Affairs and his servants, agents and subordinate employees of the United States functioning under him, and of the said Secretary of the Department of the Interior.

LX.

That the complainant is informed and believes and therefore alleges, that the said officials, representatives, agents, servants and employees of the defendant were then and there, and have been for a long time, acting pursuant to a prearranged and preconceived plan and course of action, in collusion with the Palm Springs Chamber of Commerce and other wealthy and powerful local interests of The City of Palm Springs, and many powerful and in-

fluent residents and citizens of the city of Palm Springs in seeking to deprive, and are now seeking to deprive, said enrolled members of the said Agua Caliente, or Palm Springs, Band of Mission Indians, including complainant, of the exclusive right of use and [27] occupancy of said Palm Springs, or Agua Caliente, Indian Mission lands, and seeking to prevent the completion of the allotment of any portions thereof to qualified Agua Caliente, or Palm Springs, Mission Indian Selectees for Allotment, and to prevent the maturing and completion of the vested equitable rights, titles and interests of members of said Band, including complainant, from maturing into and becoming full and complete legal titles in and to any portion of the aforesaid Agua Caliente, or Palm Springs, Mission Indian Reservation, because and by reason of the great value of said lands, so selected for allotment by individual members of said Band, as aforesaid, and to keep and prevent said allotted lands, or any portion thereof, from passing into the private ownership and hands of Agua Caliente, or Palm Springs, Mission Indians, including complainant.

LXI.

That the complainant is informed and believes and therefore alleges, that pursuant to said wrongful plan and purpose, there is now, and for a long time has been, a well organized effort and campaign, as aforesaid, to cause the removal of the aforesaid enrolled selectees for allotment in severalty of par-

cels of land in said Agua Caliente, or Palm Springs, Mission Indian Reservation, including complainant, from the respective parcels of land heretofore informally assigned by said Band to certain of its individual enrolled members, and heretofore occupied and improved by them, including complainant, and thereafter lawfully selected by them, including complainant, for allotment in severalty, and to procure the sale in bulk of the aforesaid allotted lands of the said Agua Caliente, or Palm Springs, Mission Indian Reservation, or in default thereof, to obtain and procure the leasing of a large part of said Agua Caliente, or Palm Springs, Mission Indian Reservation lands to private interests for development for resort and recreational purposes by interested white persons of Palm Springs [28] and the vicinity, and in the interest of persons, firms and corporations of great wealth, power and influence, or in the alternative, to obtain and procure the erection and creation by an Act of Congress of a "National Monument" carved out of and embodying a large part of the lands of the said Agua Caliente or Palm Springs, Band of Mission Indians, so as to prevent the development, use, and occupation of said lands by said Agua Caliente, or Palm Springs, Band of Mission Indians, including complainant, all to the great injury, damage and irreparable detriment of the said Agua Caliente, or Palm Springs, Band of Mission Indians, the enrolled members thereof, and more especially the selectees including this complainant, of lands for allotment in severalty under

the existing Acts of Congress, aforesaid, and the allottees having, holding and occupying parcels of land in severalty in said Reservation, under and pursuant to informal assignment thereof by said Agua Caliente, or Palm Springs, Band of Mission Indians and said executed and delivered Certificates of Selection for allotment in severalty, aforesaid, including this complainant.

LXII.

That this complainant is informed and believes, and therefore alleges, upon information and belief, that the sole and only reason for the withholding and neglect of the said Secretary of the Department of the Interior of the United States of approval of the said Certificates of Selection for allotment and of the Patents in Trust by the defendant in favor of each of the said selectees for allotment in severalty of lands of the Agua Caliente, or Palm Springs, Band of Mission Indians, including this complainant, was by the acts, and actions, of the said Bureau of Indian Affairs of the Department of the Interior of the United States, and of the Commissioner of the Bureau of Indian Affairs and the Secretary of the Interior of the United States and was and is the presently existing great value of the real property so selected by the respective [29] members of the Agua Caliente, or Palm Springs, Band of Mission Indians, including this complainant. The said selections for lands to be allotted, in severalty, and patented in trust to the respective members of said Agua Caliente, or Palm

Springs, Band of Mission Indians, including those lands selected for allotment by complainant are now, and for a long time have been, of great value by reason of the close proximity of the City of Palm Springs, a winter resort frequented and patronized by people of great wealth and social position, to said lands and allotments the gradual development of a small desert town of no particular consequence or importance into a City of the Sixth Class, recently incorporated, and in which there have been erected, upon lands privately owned by white people, buildings and improvements of great value, including two hotels, each valued in excess of \$1,000,000, erected in close proximity to the Agua Caliente, or Palm Springs, Indian Reservation; the greatly enhanced and increased commercial value of the real estate in said fashionable winter resort, the close proximity to an Indian Spring, which is within the confines and limits of the aforesaid Agua Caliente, or Palm Springs, Indian Reservation; the fact that the said Agua Caliente, or Palm Springs, Indian Reservation consists of checker-boarded even numbered sections of land spread between and surrounded by adjacent odd numbered sections of land, which have been thickly settled and populated by white people, deriving their titles to such lands from and through grants by the Southern Pacific Railway Company, which receive every odd numbered section of land in the vicinity of the said Agua Caliente, or Palm Springs, Mission Indian Reservation, aforesaid, by land grant from the

United States, and thereafter disposed of the same for settlement and subdivision by white people; the great and rapid growth and augmentation of the population of said odd sections of land so granted to the Southern Pacific Railroad Company, as aforesaid, resulting from sub-division of said lands so granted by the [30] Southern Pacific Railroad Company, to whites, in small parcels held in fee simple individual ownership by many wealthy and influential white people; the exemption from taxation granted by the Acts of Congress and Executive Order of the President of the United States, aforesaid, to said Reservation Indians, including complainant, and the desire, of many of said nearby white people, aided, abetted and assisted by the Palm Springs Chamber of Commerce and defendant, to acquire, own and possess the lands now comprised within the boundaries and limitations of the said Agua Caliente, or Palm Springs, Indian Reservation, aforesaid.

LXIII.

That the said plan by and on the part of white people owning real property in the vicinity of the aforesaid Agua Caliente, or Palm Springs, Mission Indian Reservation, has had and now has the active participation and co-operation of the Mission Indian Agency of the Bureau of Indian Affairs, of the Department of the Interior and the agents, servants and employees thereof and the said Bureau of Indian Affairs and Secretary of the In-

terior, and in aid thereof the issuance of said patents has been withheld.

LXIV.

That after so finding as a fact, that the aforesaid members of the Agua Caliente, or Palm Springs, Band of Mission Indians, including this complainant, had adopted the habits and ways of civilized life and attained a degree of civilization justifying the allotment in severalty of lands of the said reservation to individual allottees, including this complainant, the act of the Secretary of the Interior in holding the approval of the Special Schedules of Allotment of H. E. Wadsworth, Special Allotting Agent at Large of the Mission Indian Bands of California in abeyance for a long period of time, as aforesaid, and then, after the rejection and disapproval of a bill presented to the House of Representatives of the United States (H.R. 5297, 75th Congress, 1st Session) by [31] the Secretary of the Interior for the purpose of repealing that provision of the Act of March 2, 1917 (39 Stat. L., 976) directing the making of allotments to Indians of the Agua Caliente, or Palm Springs, Band of Mission Indians of the Agua Caliente, or Palm Springs, Band of Mission Indians Reservation, by the Secretary of the Interior, and after the rejection and disapproval of the same bill No. S. 1424, and the rejection and disapproval of Senate Bill "S. 2589", the action of the Secretary of the Interior in disapproving the Certificates of Selection of lands for allotment to this complainant in severalty, as afore-

said, was and is an arbitrary, oppressive and coercive act, done in violation of the then and there existing vested rights of this complainant in and to all of the aforesaid described parcels of land, and in violation of the terms and provisions of the Act of Congress of March 2, 1917 (39 Stat. L. 976), and was and is an overt act committed pursuant to said prearranged and preconcerted plan and course of action, aforesaid.

LXIX.

That the failure to complete the partially executed allotments of parcels of selected lands, as aforesaid, to the individual enrolled allottees of the said Agua Caliente, or Palm Springs, Band of Mission Indians, under and pursuant to the aforesaid Acts of Congress, and in derogation of the vested rights of the said allottees, has resulted, and is resulting, in the retardation of the economic and social welfare of the said Agua Caliente, or Palm Springs, Band of Mission Indians and the enrolled members of the said Band, including your complainant.

LXX.

That the actions of the aforesaid Bureau of Indian [32] Affairs of the Department of the Interior of the United States, and the actions of the Secretary of the Interior of the United States, are and have been, throughout a long period of time, pursuant to a prearranged and preconcerted plan and course of action to destroy the interests of said Indians in said lands.

LXXI.

That during and throughout the time during which the said Secretary of the Interior and his predecessors in office were holding in abeyance, without action, either approval or disapproval, of the said Official Schedules of Allotment of H. E. Wadsworth, Special Allotting Agent at Large for the Mission Indian Reservations of California covering the allotments selected by the enrolled members of the Agua Caliente, or Palm Springs, Band of Mission Indians, including complainant, and during the time throughout which the said Secretary of the Interior and his predecessors in office were withholding action of approval or disapproval of the Certificates of Selection issued to the individual enrolled members of the said Agua Caliente, or Palm Springs, Band of Mission Indians, issued by the said H. E. Wadsworth, Special Allotting Agent, aforesaid, the Department of the Interior, its official representatives, agents, servants and employees, were engaged in conducting, in breach of their fiduciary duty to this complainant, as an incompetent ward of the United States, a campaign in collusion with and co-operating with certain private interests of great wealth and power, and more particularly the Chamber of Commerce of the City of Palm Springs and numerous members thereof, to procure the enactment of Acts of Congress detrimental to the interests of this complainant and destructive of, or seeking to destroy, the vested right, title and interest of this complainant

in and to the aforesaid lands, all pursuant to a pre-arranged and preconcerted plan and course of action, and to the injury and detriment of complainant. [33]

LXXII.

That your complainant is without adequate remedy at law in the premises.

Wherefore, complainant prays:

That it be adjudged, ordered and decreed by this Court:

1. (a) That on, to wit, the 21st day of June, 1923, and on to wit, the 9th day of May, 1927, this complainant and Francisco Arenas, his father, Guadalupe Arenas, his wife, and Simon Arenas, his brother, had each voluntarily adopted the habits and ways of civilized life by voluntarily living separate and apart from all other Indians of the Agua Caliente, or Palm Springs, Band of Mission Indians, and from all other tribal Indians, although still maintaining tribal relations with said Agua Caliente, or Palm Springs, Band of Mission Indians, without in anywise waiving or terminating their respective rights, in and to the tribal lands and the uses and benefits thereof of the said Agua Caliente, or Palm Springs, Band of Mission Indians lands and property; that said status was and has been maintained by complainant to and until the present date and that said status was maintained by the said Francisco Arenas, Guadalupe

Arenas and Simon Arenas to and until their respective deaths, and that complainant now has and the aforesaid Francisco Arenas, Guadalupe Arenas, and Simon Arenas to and until their respective deaths, and that complainant now has and the aforesaid Francisco Arenas, Guadalupe Arenas; and Simon Arenas did have and possess until the time of their respective deaths, the degree of civilization necessary to possess the capacity to own, hold and manage lands in severalty, at all times;

(b) That the selection and notification of the selection of specific parcels of land within the confines and limits of the Agua Caliente, or Palm Springs, Mission Indian Reservation to H. E. Wadsworth, Special Allotting Agent at Large of the United States for the Mission Indian Reservations prior to the preparation and [34] execution of the Official Schedules of Allotment of the lands of the Agua Caliente, or Palm Springs, Band of Mission Indians of California, on to wit, June 21st, 1923 and May 9, 1927, respectively did vest in complainant and in the complainant and in the said Guadalupe Arenas, Francisco Arenas and Simon Arenas rights, titles and interest in and to the lands so selected by them, and each of them, separate and apart from all other members of said Band;

(c) That the acts and conduct of the Secretary of the Interior of the United States and his predecessors in office as Secretary of the Interior of the United States, in withholding approval or disapproval of the aforesaid Official Schedules of Allot-

ment prepared by H. E. Wadsworth, Special Allotting Agent at Large of the United States for the Mission Indian Reservations of California, dated, to wit, June 21st, 1923 and May 9th, 1927 and in holding the matter of the approval or disapproval of the Secretary of the Interior thereof in abeyance for a long period of time, were and are acts of negligence of official mandatory and ministerial duty amounting to fraud perpetrated against this complainant and against Francisco Arenas, Guadalupe Arenas, and Simon Arenas, respectively;

(d) That the acts and conduct of the Secretary of the Interior of the defendant and his predecessors in office as Secretary of the Interior of the United States in withholding the approval or disapproval of the Certificates of Selection for Allotment of this complainant and of Francisco Arenas, Guadalupe Arenas and Simon Arenas issued to this complainant and to said Francisco Arenas, Guadalupe Arenas and Simon Arenas, respectively, by the said H. E. Wadsworth, Special Allotting Agent at Large of the United States for the Mission Indian Reservations of California and the Commissioner of Indian Affairs for a long period of time, and the action of the Secretary of the Interior in thereafter [35] disapproving the said respective Certificates of Selection of Lands for allotment in severalty, aforesaid, were and are acts of neglect of official, mandatory and ministerial duty amounting to fraud, and that complainant and said Francisco Arenas, Guadalupe Arenas and Simon

Arenas did each acquire vested interests in and to the lands described in such Certificates and that this complainant now possesses vested interests in and to the lands described in such respective certificates;

(e) That the subsequent disapproval of said Certificates of Selection of Lands of the Agua Caliente, or Palm Springs, Band of Mission Indians to this complainant and to Francisco Arenas, Guadalupe Arenas and Simon Arenas by the Secretary of the Interior of the United States, after the rights, titles and interests of each of said persons had vested in the lands therein described was and is null, void and of no effect whatever and operated to divest each of the said persons of a vested right, title and interest in and to real property, without due process of law, in violation of the Fifth Amendment of the United States of America;

(f) That complainant is entitled to a Trust Patent, or Trust Patents, to all of the said lands hereinabove described from the United States of America.

(2) That a copy of the Judgment and Decree of this Court be certified to the Secretary of the Interior of the United States;

(3) That all costs and disbursements of this Complainant, in and about this action incurred be paid by the defendant from funds other than the tribal funds of the said Agua Caliente, or Palm Springs, Band of Mission Indians of California and;

(4) That the complainant have such other and further relief as justice and equity may require.

DAVID D. SALLEE

OLIVER O. CLARK

HARRY ASHTON

Attorneys for Complainant. [36]

(Duly verified.)

[Endorsed]: Filed Oct. 27, 1941. [37]

[Title of District Court and Cause.]

**NOTICE OF MOTION FOR DISMISSAL OF
SECOND AMENDED COMPLAINT, OR IN
THE ALTERNATIVE, FOR A SUMMARY
JUDGMENT**

To David D. Sallee, Oliver O. Clark, and Harry Ashton, Attorneys for Plaintiff in the above entitled cause:

You and Each of You Will Please Take Notice that the defendant, United States of America will, on the 12th day of January, 1942, at the hour of ten o'clock A.M., or as soon thereafter as counsel may be heard, bring on for hearing before the above entitled court, in the courtroom of the Honorable J. F. T. O'Connor, in the United States Post Office and Court House Building, Los Angeles, California, a motion to dismiss the second amended complaint heretofore filed herein on October 27, 1941, on the grounds that it does not contain a short and plain

statement of the claim of plaintiff herein as required by Rule 8(a), New Federal Rules of Civil Procedure, and on the further ground that said second amended complaint is prolix, voluminous, argumentative, and abounds in impertinent, scandalous, redundant and immaterial matter.

You and each of you will further take notice that said defendant, at the same time and place, in the event the above mentioned motion to dismiss said second amended complaint is denied, will bring on for hearing a motion that summary judgment be entered against the plaintiff herein on the grounds that there is no genuine issue as to any material fact, and that the defendant is entitled to judgment as a matter of law in accordance with Rule 56(b) and (c) of the Federal Rules of Civil Procedure. [38]

Said alternative motions will be based upon the files, records and pleadings of the above entitled action, the files, records, pleadings and further proceedings in the case of St. Marie vs. United States, filed in this District and numbered Equity 918-Y, upon the following documents, copies of which are attached hereto, the originals of which are heretofore filed herein on March 11, 1941:

- (a) Affidavit of Carl Spinner;
- (b) Certificate of E. J. Armstrong;
- (c) Points and authorities.

and upon the memorandum of points and authorities and the affidavit of Frederick H. Steinmetz, attached hereto and filed this date.

Dated: November 29, 1941.

WM. FLEET PALMER,
United States Attorney.

IRL D. BRETT,

FREDERICK H. STEINMETZ,
Special Attorneys,

Lands Division,

Department of Justice

By FREDERICK H. STEINMETZ
Attorneys for Defendant. [39]

[Title of District Court and Cause.]

AFFIDAVIT OF CARL SPINNER

Carl Spinner, being first duly sworn, deposes and says:

(1) That he is the Principal Clerk of the Mission Indian Agency of the Office of Indian Affairs of the Department of the Interior, located at Riverside, California; that he was first appointed to service on January 19, 1922, and was assigned to duty in the above agency at Riverside, California; that he has served in one capacity or another in the Mission Indian Agency from 1922 until the present date; that during that time he has been in constant touch with the affairs of the Palm Springs or Agua Caliente Band of Mission Indians of California, being for those years in a clerical capacity where the records and files pertaining to such Indians were maintained and kept;

(2) That he is familiar with the allotment schedule prepared by Special Allotting Agent Harry E. Wadsworth in the year 1923; that he is also familiar with the schedule of allotments prepared by said Special Allotting Agent for the Palm Springs Band of Mission Indians in 1927; that he has examined and is acquainted with the certificates of selection issued to various individual members of the said band by said Special Allotting Agent; that he is familiar with all of the correspondence, files, and reports pertaining to such allotment schedule and the [40] correspondence from the Secretary of the Interior in relation thereto; and that in such correspondence, records, reports, and files there is not and never has been an approval by the Secretary of the Interior of said schedules of allotment or any of them, or of any certificate of selection, but on the contrary such files, etc., reveal that the Secretary of the Interior has disapproved the allotment schedule and certificates of selection.

(signed) CARL SPINNER

Subscribed and sworn to before me this 6th day of May, 1941.

(s) LOWELL W. LYONS

Notary Public in and for said
county in said state.

My commission expires Nov. 24, 1943. [41]

CERTIFICATE OF E. J. ARMSTRONG

United States
Department of the Interior
Office of Indian Affairs
Washington

District of Columbia—ss.

This is to certify that the records of this Office show that neither of the allotment schedules prepared by Harry E. Wadsworth, Special Allotting Agent at Large, under date of June 21, 1923, nor May 9, 1927, nor any of the certificates of selection issued by him, covering lands within the Agua Caliente or Palm Springs Indian Reservation, California, which certificate of selection expressly show on the face thereof "not valid unless approved by the Secretary of the Interior", were ever approved by the Secretary of the Interior of the United States as required by the law in order to perfect or validate such selections in allotment.

Witness my hand and seal of this Office this 8th day of March, 1941 A. D.

[Seal]

E. J. ARMSTRONG

Acting Commissioner.

Subscribed and sworn to before me this 8th day of March, 1941 A. D., in Washington, D. C.

[Notary's Seal]

JEFF D. WARD JR.

Notary Public.

My commission expires: Nov. 15, 1944. [42]

[Title of District Court and Cause.]

**AFFIDAVIT OF
FREDERICK H. STEINMETZ**

United States of America,
Southern District of California—ss:

Frederick H. Steinmetz, being first duly sworn,
deposes and says:

1. That he is a Special Attorney, Lands Division,
of the United States Department of Justice; that as
such he is one of the attorneys for the defendant in
the above entitled cause;

2. That this is an action to compel the defendant
to issue a trust patent to the plaintiff for certain
lands;

3. That your affiant verily believes that there is
no genuine issue as to any material fact, and that
defendant is entitled to judgment as a matter of
law;

4. That the subject matter and purpose of the
second amended complaint herein and of the mate-
rial allegations thereof are the same as the subject
matter, purpose and allegations of the complaint in
the case of *St. Marie vs. U. S.* filed in this District
and numbered Equity 918-Y, and decided by this
court against the plaintiffs therein, who were in the
same position as plaintiff herein, and in favor of
the defendant, United States of America, being the
same defendant as in this case;

5. That the decision of this court in *St. Marie
vs. United States* is reported in 24 Fed. Supp. 237;
that the judgment of this court [46] in said case was
affirmed by the Circuit Court of Appeals for the 9th
Circuit, as reported in 108 Fed.(2d) 876; that cer-

tiorari was denied on October 14, 1940, by the Supreme Court of the United States, see 85 L.Ed. 60; that all material issues of law and fact raised by the amended complaint herein were raised in the said case of *St. Marie vs. United States*, and resolved in favor of the defendant; that the only allegations in the amended complaint herein not contained in the complaint in the aforesaid *St. Marie* case are as follows, in brief, to wit: That the defendant is estopped from denying the plaintiff's right to Patent by representations or misrepresentations of the Secretary of the Interior and the Commissioner of Indian Affairs; (a) That plaintiff was entitled to possession of the land; (b) That a certificate of allotment was evidence of a right to possession; (c) That a trust patent would be issued, and (d) That plaintiff would be justified in making substantial expenditures to improve the property. That assuming the truth of plaintiff's allegations, they are immaterial and raise no justiciable issues of fact or law in that the United States is not bound or estopped by unauthorized and unsanctioned statements or acts of its officers.

FREDERICK H. STEINMETZ

Subscribed and Sworn to before me, this 28 day of November, 1941.

[Seal]

R. S. ZIMMERMAN.

Clerk of the United States
District Court, Southern Dis-
trict of California.

By J. M. HORN

Deputy.

[Endorsed]: Filed Dec. 1, 1941. [47]

[Title of District Court and Cause.]

No. 1321-R J Civil

**NOTICE OF MOTION FOR SUMMARY
JUDGMENT**

To David D. Sallee and Oliver O. Clark, Attorneys
for Plaintiff in the Above-entitled Cause:

Please take notice, that on the 24th day of March, 1941, at the hour of ten o'clock A.M., or as soon thereafter as counsel can be heard, I shall appear before His Honor, Judge Jenney, in the room occupied by him as a court room in the United States Post Office and Court House Building, Los Angeles, California, and move that Summary Judgment be entered herein on the ground that there is no genuine issue as to any material fact and that the defendant is entitled to a judgment as a matter of law in accordance with Rule 56 (b) and (c) of the Federal Rules of Civil Procedure, and in support of said Motion, I shall present affidavits, copies of which are hereto attached.

WM. FLEET PALMER,

United States Attorney

BATES BOOTH,

Special Attorney,

Department of Justice. [48]

[Title of District Court and Cause.]

AFFIDAVIT OF BATES BOOTH

United States of America,
State of California,
County of Los Angeles—ss.

Bates Booth, being first duly sworn, deposes and says:

1. That he is a Special Attorney in the Department of Justice of the United States, and that he is the attorney for the defendant in the above-entitled action;

2. That this is an action to compel the defendant to issue a patent to the plaintiff for certain lands;

3. That your affiant verily believes that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law;

4. That the subject matter and purpose of the complaint herein, and all the material allegations thereof, are the same as the subject matter, purpose, and allegations of the complaint in the case of *St. Marie vs. United States*, filed in this district and numbered Equity 918-Y, and decided by this court against the plaintiffs therein, being in the same position as plaintiff herein, and in favor of the defendant United States of America, being the same defendant as in this case; that the decision of this court in *St. Marie vs. United States* is reported in 24 F. Supp. 237; that the judgment of this court was affirmed by the Circuit Court of Appeals for the Ninth Circuit, as reported in 108 F. (2d)

876; that certiorari was denied on October 14, 1940, by the Supreme Court of the United States, 85 L. Ed. 60; that all material issues of law and fact raised by the complaint herein were raised in the said case of *St. Marie vs. United States*, and resolved in favor of the defendant; that the only allegations in the complaint herein not contained in the complaint in the aforesad *St. Marie* case are contained in Paragraphs III to VIII inclusive, X to XV inclusive, XVIII to XXIII inclusive, and XXV to XXXI inclusive of the complaint herein; that such allegations are, in brief, that the defendant is estopped from denying the plaintiff's right to patents by representations of the Secretary of the Interior and the Commissioner of Indian Affairs (a) that plaintiff was entitled to possession of the land, (b) that a certificate of allotment was evidence of a right of possession, (c) that a trust patent would be issued, and (d) that plaintiff would be justified in making substantial expenditures to improve the property. That assuming the truth of plaintiff's allegations, they are immaterial and raise no justiciable issues of fact or law in that the United States is not bound or estopped by unauthorized and unsanctioned statements or acts of its officers;

5. That submitted herewith and attached hereto are an affidavit of the Principal Clerk of the Mission Indian Agency, and a certificate of the Acting Commissioner of Indian Affairs of the Department of the Interior; that neither the allotment schedules

alleged in the complaint herein nor any of the certificates of selection alleged in the complaint herein, which certificates of selection specifically show on their face that they are "not valid unless approved by the Secretary of the Interior", were ever approved by the Secre- [50] tary of the Interior as required by law; that therefore no allotment or certificate of selection approved by the Secretary of the Interior was ever made, effected, granted, or issued to plaintiff herein or to any member of the tribe under whom he claims;

6. Defendant, therefore, prays that an order be made granting judgment in favor of the defendant herein.

BATES-BOOTH,

Special Attorney,

Department of Justice.

Subscribed and Sworn to before me this 11 day of March, 1941.

[Seal]

R. S. ZIMMERMAN,

Clerk U. S. District Court.

Southern District of Califor-

nia. J. M. Horn.

[Endorsed]: Filed Mar. 11, 1941. [51]

[Here follows "Certificate of E. J. Armstrong" which is set out at page 52, and "Affidavit of Carl Spinner" which is set out at page 50.]

In the District Court of the United States in and
for the Southern District of California, Central
Division.

No. 1321-O'C Civil

LEE ARENAS,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This cause having come on to be heard on the 26th day of January, 1942, before the Honorable J. F. T. O'Connor, United States District Judge for the Southern District of California, on the motion of the defendant for Summary Judgment; and

Oliver O. Clark, Esq. appearing as counsel for plaintiff, and Frederick H. Steinmetz, Special Attorney, Lands Division, Department of Justice, counsel for defendant, and the matter having been argued by respective counsel and submitted to the Court; and

It appearing to the Court that issues raised in the Second Amended Complaint dealing with misrepresentations, fraud, and conspiracy on the part of representatives of the defendant, and the possibility of an estoppel as against the defendant arising out of representations made by agents of the defendant are not justiciable for the reason that the defendant, United States of America, may not be bound by the

unauthorized or unlawful or tortious acts of its officers or agents; and [56]

It further appearing that all other issues raised by said Second Amended Complaint have been heretofore decided adversely to the contention of the plaintiff herein by the Circuit Court of Appeals in and for the Ninth Circuit in the case of *St. Marie v. United States*, reported in 108 Fed. 2d 876, by which decision this honorable Court deems itself bound;

Therefore, It Is Ordered Adjudged and Decreed:

That the motion of defendant for Summary Judgment be granted; that plaintiff take nothing by its Seconded Amended Complaint on file herein; and that defendant have its costs of suit herein incurred in the sum of Fifteen Dollars (\$15.00).

Dated: This 6th day of March, 1942.

J. F. T. O'CONNOR

United States District Judge

Presented by:

WM. FLEET PALMER,

United States Attorney.

IRL D. BRETT,

FREDERICK H. STEINMETZ,

Special Attorneys,

Lands Division,

Department of Justice.

By **FREDERICK H. STEINMETZ**

Attorneys for Defendant

Approved as to Form:

DAVID D. SALLEE,

OLIVER O. CLARK,

HARRY ASHTON.

By OLIVER O. CLARK

Attorneys for Plaintiff.

[Endorsed]: Filed and entered Mar. 6, 1942. [57]

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM JUDGMENT

Notice Is Hereby Given that the Plaintiff herein, Lee Arenas, does hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the Judgment heretofore made herein and entered herein on March 6, 1942 in Civil Order Book No. 8, Page 475 thereof, which Judgment was made and entered in favor of said Defendant and upon said Defendant's motion for summary judgment herein.

Dated: June 3rd, 1942.

OLIVER O. CLARK

DAVID D. SALLEE

HARRY ASHTON

ROBERT A. SMITH

By OLIVER O. CLARK

Attorneys for Plaintiff and
Appellant.

Mailed copies to attys for appellee Jun 4 1942.)

[Endorsed]: Filed Jun. 4, 1942. [58]

[Title of District Court and Cause.]

BOND ON APPEAL

Whereas, the Plaintiff in the above entitled action has appealed to the Circuit Court of Appeals of the United States of America, Ninth Circuit, from a judgment rendered against him in said action in the above entitled Court, and in favor of the defendant and entered on the 6th day of March, 1942; now, therefore,

In consideration of the premises and of such appeal, we the undersigned, residents, freeholders and householders within the County of Los Angeles, State of California, do hereby jointly and severally undertake and promise on the part of the appellant that the said appellant will pay all damages and costs which may be awarded against him on the appeal, if the judgment appealed from is affirmed, or is modified, or if said appeal is dismissed, not exceeding the sum of \$250.00, to which amount we acknowledge ourselves jointly and severally bound.

Dated: June 13, 1942.

S. S. ALDRIDGE

LEON S. ALDRIDGE

We, the undersigned, each of whom has executed the foregoing bond, does hereby state for himself and not one for the other, that he is a resident, freeholder, and householder within the county of Los Angeles, State of California, and is reasonably

worth more [59] than \$1,000.00 over and above all of his just debts and liabilities.

Dated: June 13th, 1942.

S. S. ALDRIDGE

LEON S. ALDRIDGE

Subscribed and sworn to before me this 13 day of June, 1942.

[Seal]

DAVID D. SALLEE

Notary Public in and for the County of Los Angeles, State of California.

It Is Ordered, that the foregoing bond may be filed herein as Plaintiff's Bond on Appeal herein.

Dated: June 15, 1942.

J. F. T. O'CONNOR

Judge.

[Endorsed]: Filed Jun 15 1942. [60]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

To the Appellee herein, and to Wm. Fleet Palmer, United States Attorney, and Irl D. Brett and Frederick H. Steinmetz, Special Attorneys, Lands Division, Department of Justice, Attorneys for Appellee:

Appellant intends to rely upon the following points on this appeal:

I.

That the judgment appealed from is erroneous and that the District Court of the United States

for the Southern District of California, Central Division, was without jurisdiction or authority to make or enter said judgment for the reason that the second amended complaint of plaintiff and appellant stated facts sufficient to constitute a cause of action against the defendant and appellee and to entitle plaintiff to the relief thereby sought.

II.

That the judgment appealed from is erroneous for the reason that it clearly appears from the facts alleged in the second amended complaint of plaintiff and appellant that the District Court of the United States for the Southern District of California, Central Division, had jurisdiction of the subject matter set forth in said complaint and that it was the duty of said defendant to issue patents as [61] prayed for in said second amended complaint, and to otherwise perform the acts required of said appellee as set forth in said second amended complaint, and that said defendant appellee is estopped to deny its authority or duty to perform any of said acts or to issue any such patent or to deny to this appellant the relief therein sought by him.

Dated: June 11th, 1942.

OLIVER O. CLARK
DAVID D. SALLEE
HARRY ASHTON and
ROBERT A. SMITH

By OLIVER O. CLARK

Attorneys for Plaintiff and
Appellant.

[Endorsed]: Filed Jun. 12, 1942. [62]

[Title of District Court and Cause.]

No. 1321-O'C-Civil

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD**

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 64 inclusive contain full, true and correct copies of Second Amended Complaint; Motion for Dismissal of Second Amended Complaint, or in the alternative, for Summary Judgment; Notice of Motion for Summary Judgment; Judgment; Notice of Appeal; Bond on Appeal; Statement of Points on which Appellant Intends to Rely on Appeal; Designation of Contents of Record on Appeal and Order Extending Time for Appellant to Prepare and File Record on Appeal which constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$10.10 and that the said amount has been paid to me by Appellant.

Witness my hand and the seal of the said District Court this 11 day of August, 1942.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE,

Deputy Clerk.

[Endorsed]: No. 10219. United States Circuit Court of Appeals for the Ninth Circuit. Lee Arenas, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed, August 12, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

LEE ARENAS,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

DESIGNATION OF PRINTED RECORD AND
STATEMENT OF POINTS RELIED UPON

To the above named Appellee and to Wm. Flett Palmer, United States Attorney, and Irl D. Brett and Frederick H. Steinmetz, Special Attorneys, Lands Division, Department of Justice, Attorneys for Appellee, and to Paul P. O'Brien, Clerk of the above entitled Court:

Appellant designates the following parts of the record which he thinks necessary for the considera-

tion of the points to be relied upon on this appeal, to-wit:

- (1) Second Amended Complaint;
- (2) Motion for Dismissal of Second Amended Complaint or in the Alternative for Summary Judgment;
- (3) Motion for Summary Judgment;
- (4) Judgment;
- (5) Notice of Appeal;
- (6) Bond on Appeal;
- (7) Statement of Points on Appeal.

Appellant intends to rely upon the following points on this appeal:

I.

That the judgment appealed from is erroneous and that the District Court of the United States for the Southern District of California, Central Division, was without jurisdiction or authority to make or enter said judgment for the reason that the second amended complaint of plaintiff and appellant stated facts sufficient to constitute a cause of action against the defendant and appellee and to entitle plaintiff to the relief thereby sought.

II.

That the judgment appealed from is erroneous for the reason that it clearly appears from the facts alleged in the second amended complaint of plaintiff and appellant that the District Court of the United States for the Southern District of California, Central Division, had jurisdiction of the subject matter set forth in said complaint and that it was the duty of said defendant to issue patents as prayed for in

said second amended complaint, and to otherwise perform the acts required of said appellee as set forth in said second amended complaint.

III.

That the judgment appealed from is erroneous for the reason that it appears from the facts alleged in said second amended complaint that said defendant appellee is estopped to deny its authority or duty to perform any of said acts or to issue any such patent or to deny to this appellant the relief therein sought by him.

Dated: August 11th, 1942.

OLIVER O. CLARK
DAVID D. SALLÉE
HARRY ASHTON and
ROBERT A. SMITH

By OLIVER O. CLARK

Attorneys for Appellant.

Received copy of within designation, etc., on August 11, 1942.

FREDERICK H. STEINMETZ
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 12, 1942.

[Title of Circuit Court of Appeals and Cause.]

COUNTER DESIGNATION OF RECORD
TO BE PRINTED

To the Above Named Appellant and Oliver O. Clark, David D. Sallee, Harry Ashton, and

Robert A. Smith, His Attorneys, and to Paul
P. O'Brien, Clerk of the Above Entitled Court:

Appellee specifically designates the following
parts of the record which it thinks necessary for
the consideration of the points involved in this
appeal, to wit:

1. Affidavit of Carl Spinner, dated May 6, 1941.
2. Certificate of E. J. Armstrong, dated March
8, 1941.
3. Affidavit of Frederick H. Steinmetz, dated
November 28, 1941.

The above items were attached to and referred
to in the Notice of Motion for Dismissal of Second
Amended Complaint, or in the Alternative, for
Summary Judgment, filed in the Court below on
behalf of appellee herein.

Dated: This 20th day of August, 1942.

WM. FLEET PALMER,
United States Attorney,

IRL D. BRETT,
Special Assistant to the
Attorney-General.

FREDERICK H. STEINMETZ,
Special Attorney,
Lands Division,
Department of Justice.

By **FREDERICK H. STEINMETZ**
Attorneys for Appellee

[Endorsed]: Filed Aug. 21, 1942.

No. 10219

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

LEE ARENAS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division**

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**



**United States Circuit Court of Appeals
For the Ninth Circuit**

**Excerpt from Proceedings of Monday, March 8,
1943.**

**Before: Wilbur, Denman and Mathews,
Circuit Judges.**

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Oliver O. Clark, counsel for the appellant, and by Mr. Norman McDonald, Special Assistant to the Attorney General, counsel for appellee, and submitted to the court for consideration and decision.

**United States Circuit Court of Appeals
For the Ninth Circuit**

**Excerpt from Proceedings of Wednesday, June
30, 1943.**

**Before: Wilbur, Denman and Mathews,
Circuit Judges.**

[Title of Cause.]

**ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF DECREE**

By direction of the Court, Ordered that the type-written opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon appeal from the District Court of the United States for the Southern District of California, Central Division.

OPINION AND CONCURRING OPINION

Before: Wilbur, Denman and Mathews,
Circuit Judges.

Wilbur, Circuit Judge:

The appellant is a member of the Agua Caliente Band of Mission Indians of the Palm Springs Reservation in Riverside, California. He claims the right to certain land described in his complaint on the theory that the same has been allotted to him by the Secretary of the Interior. He admits that the points raised by him were disposed of by this court adversely to his claim in the case of *St. Marie v. United States*, 108 F.2d., 876. He claims, however, that that decision was in error and also that this case may be distinguished from the former decision upon the ground that it is admitted in the case at bar "that there had been a determination that the Indians in question were sufficiently advanced so as to comply with the act" under which the allotments were made. That case was predicated upon the theory that until the Secretary of Interior approved the alleged allotments there was no right thereto, vested in the alleged allottee. In this case we follow the decision heretofore made in the *St. Marie* case.

The appellant also urges that there is an estoppel on the part of the federal authorities to question the

validity of the alleged allotment to the appellant. There is no merit in this contention. *Utah Pr. & Lt. Co. v. United States*, 243 U.S. 389; *Yuma v. Schlecht*, 262 U.S. 138.

Affirmed.

Denman, Concurring:

I concur. Congress by the Act of June 18, 1934, 25 U.S.C.A. 461, has taken from the Secretary of Interior any power he theretofore had to allot lands, except with the consent of the tribe, such consent not here known to have been given. 25 U.S.C.A. 478 (a). Unless Arenas had some legal or equitable right to the lands he claims, of which it would be a violation of the Fifth Amendment to deprive him, his claim here is invalid.

The Act of March 2, 1917, 39 Stat. 969, 976, does no more than change the acreage which the Secretary may allot under the Mission Indian Act of January 12, 1891, 26 Stat. 712. Under the latter Act the Indian has no such right of selection for the allotment and no such property right in the selected land as was given the Indians under the General Allotment Act of 1887, or its amendments, 25 U.S.C.A. 331, 332, and as recognized in Sec. 1 of the Act of 1894, 31 Stat. 760, 25 U.S.C.A. 345, and in such cases as *Hy-Yutse-Mil-Kin v. Smith*, 194 U.S. 401.

Under the Mission Indian Act a selection, made by the Secretary as a step in the allotment of land to some Indian, was not binding on the government. The Secretary could have made some other selection

as a substitute for the same Indian. Only when an allotment was made did the allottee acquire any right in the land. Since there was no such action in Arenas' favor prior to 1934, he has no property right of any kind of which it could be construed that the Constitution forbids taking from him by the 1934 Act.

[Endorsed]: Opinion and Concurring Opinion.
Filed Jun. 30, 1943. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10219

LEE ARENAS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgment decree of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Filed and entered June 30, 1943.
Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

Excerpt from Proceeding of Wednesday, August 4, 1943.

Before: Wilbur, Denman and Mathews,
Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION
FOR REHEARING

Upon consideration thereof, and by direction of the Court, Ordered that the petition of appellant, filed July 28, 1943, and within time allowed therefor by rule of court for a rehearing of above cause be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, OF RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES.**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing Seventy-Seven (77) pages, numbered from and including 1 to and including 77, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 29th day of Sept. 1943.

[Seal]

PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 20, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.